

FPC Meeting Monday May 5 and 6, 2008.

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Agenda Item #1: T/I Rule Review (Group #1 Goal/Intent –Definitions)

- **FPC conducted its second meeting on the T/I rules rule review related to evaluating the Goal/ Intent and Definitions section of the T/I rules. Below is a summary of comments and discussion prepared by Board staff.**
- **BOF authority for “restoration” of resource values:** BOF counsel discussed opinion on PRC 4512 and 4551. BOF statutory authority provides for equal consideration of timber harvesting and resource protection. Provisions for timber harvesting must be balanced with consideration for resource protection. This interpretation allows for consideration of restoring resource values with the scope of “resource protection”. Extent to which BOF includes restoration of resource, and consistency with other agency restoration requirements, is within their authority and at their discretion. Board Counsel will provide a written opinion on the issue that will be made available to the public and Board members.
- **Intent section regulatory alternative considered: T/I intent sections should have all water basin plan /303(d) impairment listings /TMDL requirements grouped together in a separate intent section.** Some of the restoration intent requirements adopted under the T/I rules in 2000 related to Clean Water Act –Porter Cologne laws and polices extend to all forest practice rules (both T/I and non T/I areas). Grouping these intent sections together would provide clarity and specificity of intent for implementation of these law/policies to all FPR area and to T/I areas.
- **Water Board/BOF Policy statement on intent to meet water board laws and policies:** A joint policy statement with both agencies would clarify intention for meeting each agency's goals. Extent to which FPRs will meet Water Board goals and policies related to restoration is at the BOF's discretion.
- **Intent section regulatory alternative considered: Design T/I rules for other agency permitting needs.** Design T/I rules to meet conditions for certification of exemption from a waste discharge permit and compliance with DFG stream alteration permit condition requirements. Similar

consideration for compliance with NOAA Fisheries ITP requirements could be considered.

- **Intent section regulatory alternative considered: Create separate T/I intent section for water board law/policy compliance and ESA compliance.** Create separate intent section for meeting CWA-Porter Cologne water basin plan /303(d) impairment listing /TMDL requirements separate from requirements for ESA listings. Separating intent section will clarify which prescriptive standards are necessary for compliance with other agency laws.
- **Definitions sections: Defer fuller evaluation until science review is considered.** Definitions generally represent scientifically based terms (except "WLT" and "channel zone") and science review will likely better define these terms.
- **Definition section alternative: "T/I watershed" definition amendment.** The definition would be re-titled for regulations specifically addressing ESA listing without lumping TMDL goals. Impaired and restoration requirements of water board law policies can then be thought about separately as a part of the FPRs for T/I watersheds.
- **Definition section alternative: "Beneficial use of riparian zone"** Consider not applying this term to all non-T/I watersheds. Also clarify term for deleting any reference to prescriptive requirements within definition.

FPC Tuesday May 6, 2008.

Agenda Item #4 (moved up in meeting for convenience of CAL FIRE team): Fire Prevention Precautions, 2008

- Chief Jim Wilson, Northern Region Fire Prevention Bureau gave an overview of the necessity for the rule in section 918 and draft rule implementation process. The proposed regulation establishes additional timber operation fire prevention inspections for operations including specific requirements for inspection for machined harvest equipment which has been an increasing source of fire ignitions related to saw head rock strikes.
- Additional discussion still needs stakeholder input, primarily discussion with Association California Loggers.

- Consensus language is likely in June 2008. Cal Fire goal is for implementation of rule for 2009 field season. ACL prefers adoption during the 2009 regulation adoption period.
- Board discussed alternatives to CAL FIRE proposal. This included alternate weather information gathering and inspection techniques.
- CAL FIRE Civil Penalties Coordinator Gerry Ahlstrom presented a regulatory proposal related to this rule section. The proposal would add requirements for fire prevention precautions (such as fire tools etc.) required by PRCs be added to the FPRs. No new regulatory requirements would be imposed on timber operators. The rule would allow for the civil penalties process to be imposed for violations instead of the existing situation where only criminal offenses and prosecution are the enforcement route.
- FPC considered combining Ahlstrom proposal with Wilson proposal. Since the Ahlstrom proposal is complete and an ISOR was presented to FPC, FPC recommends that the proposal be noticed separately, consistent with the desire of Cal Fire. Because the item was not specifically and separately noticed on the agenda for the May meeting, the proposal would be agendized for the June FPC meeting. At the June FPC meeting the proposal could be recommended for rulemaking 45 Day notice action, depending on consideration of scheduling and the need to give this proposal priority in the Board's rule-making process.

Agenda Item #2 : T/I Literature Review Contract

- Staff reported work product accomplishments from contractor. Products are related to review and recommendations of riparian function background Primers (Task 1.1) and review of Initial List of Literature and identification of additional articles for review (Task 1.2). Staff is coordinating direction for the contractor on these submissions with the TAC. Contractor is beginning its literature review task (Task 2) and will be fully operational by mid May.
- Contactor also submitted an extensive report for modifying the literature review "Key Questions" and outline for a "synthesis" format. TAC reviewed these proposals and recommended retaining the existing "Key Questions" and incorporation of contractor's suggestion for addressing watershed scale riparian function analysis and discussion of "disturbance" as a change process that affects riparian function. Staff directed contractor to submit a synthesis outline biased on Key Questions included in contract and supply documentation of a completed literature review for one function prior to completing other functions.

- Staff is estimating completion of contract by mid July 08 and likely presentation to full Board in August 2008.

Agenda Item 3: T/I Rule Process and progress

- This item included continuing use of TAC for science advisors in the broader T/I rule review, potential revisions to Rule Review Process, introduction Group # 2 rule review (geographic scope –Plan Preparation) and continuing Evaluation of Group #1 (Goal/Intent section).
- **TAC for science advisors in the broader T/I rule review:** Staff discussed the continuing role of TAC in the T/I review. Role would be to 1) periodically respond to rule review science questions submitted to TAC by providing a brief opinion on science basis of rules, and 2) review science information brought forward by stakeholders for consideration in the T/I review. This role is termed TAC II. The TAC would continue its primary charter of overseeing the literature review contract.
- Staff expressed TAC concerns that while they are highly interested and motivated to provide continuing assistance, they are requesting a stipend for three non-compensated members to offset lost income and facilitate their more active participation.
- **Action:** FPC moved to direct staff to draft a letter of appreciation for work done to date and for their consideration of continuing on with additional duties (termed for TAC II). The FPC will also recommend that the Board request to EO Gentry to provide a stipend employed and paid as their normal duties for participating in the TAC.
- Staff discussed need for possible replacement to TAC membership. One member, Bill Trush, has been unable to actively participate. Chair Gary Nakamura will contact Dr. Trush to revisit his ability to participate and possibly consider a replacement member should he not be able to participate. The NMFS representative will also be contacted to encourage NMFS' full participation within the capacity of their staffing responsibilities.
- **Revisions to Rule Review Process:** DFG representative Glenda Marsh discussed modifying the existing T/I Rule Review Process to add an additional "independent" science review following completion of the rule proposals, but prior to formal noticing the rule for APA noticing. Such as science review are routinely conducted by CAL EPA rulemaking (via contact with UC system) or the DFG NCCP process. The additional science review would add impartial science perspective of the rule proposal.

- FPC indicated that because we have a big step forward with TAC and the literature review, and the Board serves as a body of publicly visible debate/decision making, application of the additional review would be considered for use for future projects. Assumption by FPC is science will be adopted through its existing process, although a further review may add some value. FPC agrees upon not acting on this now but would reconsider at end of current review process.
- **Continuing Evaluation of Group #1 (Goal/Intent section)**
FPC requested submission of draft proposals for modification for Group #1 rules to staff during May for formulation for June meetings. Public submission in pleading comments for the intent sections is acceptable.
- FPC directed staff to work with BOF counsel to issue a written opinion (derived from confidential letter) on the issue of restoration described above. The opinion will be posted and distributed by staff.
- FPC requested the need for more information from agencies on incorporating other agency permitting requirements into the T/I rules. FPC wants to consider full board discussion item on reality and dialogue on constructing a more streamlined regulatory process that would meet multi agency permitting and recovery requirements and be facilitated through the T/I rules. Also, if such terms are added into the rules there would be a need for some documentation (i.e., MOU or joint policy) in advance of the rule amendments on what the amendments are intended to address. Such a rule proposal would also have to benefit the regulated public.
- FPC specifically requesting agencies to provide their requirements and how would this help the public. Wants pro or cons of different scopes and what technical or prescriptive features would be needed for this alternative.
- FPC also recognizes that the primary purposes of T/I rule review was to review updated science and other policy information and consider minor updates due to short term time frame and expiration. Default alternative is to simply make minor fixes to rules.
- FPC indicated that scope of intent sections of T/I rule should be consideration of ESA species requirements and 303d watercourse requirements. Considering rule amendments towards expansion to better meet the other agency's requirements for these laws are within the scope of the T/I review and potential amendments. Language should be amended to more accurately describe the scope and purpose of the rules.

- **Introduction of Group # 2 rule review (geographic scope –Plan Preparation).** FPC directed staff to notice a stakeholder meeting for Group # 2 rules for AM on Monday June 2, and continuing discussion of Group #1 rules on PM of June 2. Also, to facilitate further discussion of Group #1 rules, plan a compact agenda for second day of FPC on AM June 3.